## III. REMARKS

Claims 1-22 were pending in this application. By this amendment, claims 1, 2, 5, 8, 11, 13, 14 and 19 have been amended. Claims 3-4 and 9 have been canceled. Claims 1-2, 5-8 and 10-22 remain pending.

Applicant does not acquiesce in the correctness of the rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicant reserves the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

Entry of this Amendment is proper under 37 C.F.R. §1.116(b) because the Amendment: (a) places the application in condition for allowance as discussed below; (b) does not raise any new issues requiring further search and/or consideration; and (c) places the application in better form for appeal. Accordingly, Applicant respectfully requests entry of this Amendment.

Claims 8, 10-12, and 14-18 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Claims 1-22 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Spiegel (U.S. Patent No. 6,466,918), hereafter "Spiegel."


## A. REJECTION OF CLAIMS 8, 10-12 AND 14-18 UNDER 35 U.S.C. 101

The Office has stated that claims 8, 10-12 and 14-18 are directed to non-statutory subject matter. Specifically, regarding claim 8, the Office states that the act of identifying is performed by the user, and thus not tied to the machine or apparatus. (Final Office Action, Pages 6-7). Applicant asserts that the Office has misinterpreted the claim. As clearly described in the instant

application, the frequency system does the identifying of a high frequency item. (Para.28). However, Applicant has amended claim 8 to specifically state that the identifying is done by the computer device rather than on the computer device. Applicant believes that this overcomes the 101 rejection. Accordingly, Applicant respectfully requests that the rejection be withdrawn with regard to claim 8, as well as 10-12 which were presumably rejected on the same grounds.

Regarding claims 14-18, the Office asserts that the claims could be interpreted to include purely software components. (Final Office Action, Page 7). However, Applicant respectfully submits that the system comprises at least one computer device comprising a storage system, a frequency system, and a display system. This simply could not be interpreted as merely software, as there is at least one computer device including the system components. Applicant respectfully requests that the Office withdraw the rejections of claims 14-18.


## B. REJECTION OF CLAIMS 1-22 UNDER 35 U.S.C. §102(b)

With respect to the 35 U.S.C. §102(b) rejection over Spiegel, Applicant asserts that Spiegel does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 14 and 19, Applicant submits that Spiegel fails to disclose each and every feature of the currently amended claims. For instance, Spiegel fails to disclose the feature of, *inter alia*, "storing historical data corresponding to operations performed by each of a plurality of users to locate an item in the hierarchical structure, wherein the operations include each level and corresponding category of the hierarchical structure navigated by the plurality of users," among other features. Support for the current amendment, as well as a thorough description of the storing, can be found at least at Paragraphs 33-34 of the instant application.

Spiegel does not disclose any such storage operation. Rather, the Office cites Col. 1, Line 60 to Col. 2, Line 4 and Col. 2, Lines 26-36 (Final Office Action, Page 10), which are simply directed to elevating nodes and make no reference to storing historical data corresponding to operations performed by each of a plurality of users. The cited portion of Col. 6, Lines 5-20 discuss recording what is browsed or purchased, but not the specific actions taken to locate a certain item. Finally, Col. 9 Line 64 to Col. 10 Line 26 of Spiegel, also cited by the Office, discusses keeping a record of all purchases made by a user and if there was any web activity, which still fails to disclose storing the historical data corresponding to operations performed by each of a plurality of users to locate an item in the hierarchical structure. Thus, Spiegel fails to disclose each and every feature of the claimed invention. Accordingly, Applicant respectfully requests that the Office withdraw its rejections of independent claim 1, and independent claims 14 and 19 which are rejected on the same grounds, as well as all depending claims.

With regard to the 102(b) rejection of claim 8, Applicant has amended the claim to further describe the role of the administrator. Support for the amendment is found in at least paragraphs 30-31 of the instant application. Accordingly, Spiegel fails to disclose the feature of, *inter alia*, "wherein the administrator determines which at least one high frequency item of the identified at least one high frequency item is displayed, if the at least one high frequency item is displayed on a highest level page or the high level page and on which high level page the at least one high frequency item is displayed, and can select an item that is not a high frequency item to be displayed on the highest level page or the high level page." Of the passages of Spiegel cited by the Office for the original feature, only Col. 15, Lines 10-25 are relevant to the Administrator. However, Spiegel discloses that an Administrator can tune the system by changing the weighting

of different user activity, such as the tracking of whether a selection is click-through, purchase, search, rating, or added to a shopping cart. Clearly, the administrator is only weighting actions, and not determining which high frequency item of a plurality of high frequency items is to be displayed and at what level. Accordingly, Spiegel fails to disclose each and every feature of independent claim 8. Applicant respectfully requests that the Office withdraw its rejection of claim 8 and all depending claims.

With respect to dependent claims, Applicant herein incorporates the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicant submits that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicant respectfully requests withdrawal of this rejection.


## IV. CONCLUSION

In addition to the above arguments, Applicant submits that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicant does not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicant does not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicant reserves the right to present such arguments in a later response should one be necessary.

In light of the above, Applicant respectfully submits that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the number listed below.

Respectfully submitted,

/John W. LaBatt/

Date: January 15, 2010

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